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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

\$296,835.00 IN UNITED STATES CURRENCY,

Defendant.

2:12-cv-01489-GMN-VCF

**ORDER GRANTING MOTION FOR
RECONSIDERATION OF REPORT AND
RECOMMENDATION**

Before the court is plaintiff's Motion for Reconsideration of Report and Recommendation (#28). On November 15, 2013, the Report and Recommendation at issue was entered, recommending that a Final Judgment of Forfeiture be entered in the form set forth as Exhibit 1 to that Report and Recommendation.

The plaintiff requests modification of the Proposed Final Judgment of Forfeiture. The changes suggested by the plaintiff are appropriate.

1 Good cause appearing, plaintiff's Motion for Reconsideration (#28) is GRANTED, and

2 IT IS HEREBY RECOMMENDED that Final Judgment be entered in this case in the form
3 attached as Exhibit 1, which adjudicates the claims, rights and liabilities of all defendants, including
4 those of Ms. Agero-Simon, as established by the Settlement Agreement, Stipulation for Entry of
5 Judgment of Forfeiture as to Mercedes Agero-Simon, and Order approving same (#20 and #21).

6 Dated this 25th day of November, 2013.

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9 CAM FERENBACH
10 UNITED STATES MAGISTRATE JUDGE
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Exhibit 1

Exhibit 1

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

\$296,835.00 IN UNITED STATES CURRENCY,

Defendant.

2:12-cv-01489-GMN-VCF

**DEFAULT JUDGMENT OF FORFEITURE AS TO EAN HOLDINGS, LLC, AND ALL
PERSONS OR ENTITIES WHO CLAIM AN INTEREST IN THE DEFENDANT PROPERTY
IN THE ABOVE-ENTITLED ACTION
AND
FINAL JUDGMENT OF FORFEITURE AS TO \$296,835.00 IN UNITED STATES CURRENCY
AND MERCEDES AGERO-SIMON**

The United States filed a verified Complaint for Forfeiture in Rem (ECF No. 1) on August 22,
2013. The Complaint (ECF No. 1) alleges the defendant property:

- a. was furnished or was intended to be furnished in exchange for controlled substances in violation of Title II of the Controlled Substances Act, 21 U.S.C. § 801 *et seq.*, and is subject to forfeiture to the United States pursuant to 21 U.S.C. § 881(a)(6);
- b. is proceeds traceable to exchanges of controlled substances in violation of Title II of the Controlled Substances Act, 21 U.S.C. § 801 *et seq.*, and is subject to forfeiture to the United States pursuant to 21 U.S.C. § 881(a)(6);
- c. was used or was intended to be used to facilitate violations of Title II of the Controlled Substances Act, 21 U.S.C. § 801 *et seq.*, and is subject to forfeiture to the United States pursuant to 21 U.S.C. § 881(a)(6);

Public notice of the forfeiture action and arrest was given to all persons and entities by publication on the official government website www.forfeiture.gov from September 8, 2012, through October 7, 2012. Notice of Filing Proof of Publication, ECF No. 6.

On August 27, 2012, the Court entered an Order for Summons and Warrant of Arrest in Rem for the Property and Notice (ECF No. 4) and issued the Summons and Warrant of Arrest in Rem for the Property (ECF No. 5).

Pursuant to the Order (ECF No. 4), the Complaint (ECF No. 1), the Order (ECF No. 4), the Summons and Warrant (ECF No. 5), and the Notice of Complaint for Forfeiture (ECF No. 9, p. 3-4, 18-19, 34-35, 48-49, 61-62, and 79-80) were served on the defendant property and all persons claiming an interest in the defendant property. All persons interested in the defendant property were required to file their claims with the Clerk of the Court no later than 35 days after the notice of this action was sent by mail, followed by the filing of an answer to the Complaint within 21 days after the filing of their respective claims. Complaint, ECF No. 1; Order for Summons and Warrant of Arrest in Rem for the

1 Property and Notice, ECF No. 4; Summons and Warrant Issued by the Clerk, ECF No. 5; Notice of
2 Filing Service of Process, ECF No. 9.

3 On September 17, 2012, the United States Marshals Service served the Complaint, the Order, the
4 Summons and Warrant of Arrest in Rem for the Property, and the Notice by executing them on the
5 defendant property. Notice of Filing Service of Process, ECF No. 9, p. 2-15.

6 On October 10, 2012, the United States Marshals Service served the Complaint, the Order, the
7 Summons and Warrant of Arrest in Rem for the Property, and the Notice on Mercedes Agero-Simon,
8 aka Mercedes Berriz, by regular mail and certified return receipt mail. Notice of Filing Service of
9 Process, ECF No. 9, p. 16-46.

10 On October 3, 2012, the United States Marshals Service served the Complaint, the Order, the
11 Summons and Warrant of Arrest in Rem for the Property, and the Notice on Mercedes Agero-Simon,
12 aka Mercedes Berriz, by and through her counsel David Z. Chesnoff, by personal service. Notice of
13 Filing Service of Process, ECF No. 9, p. 47-60.

14 On October 10, 2012, the United States Marshals Service served the Complaint, the Order, the
15 Summons and Warrant of Arrest in Rem for the Property, and the Notice on CT Corporation Systems,
16 Agent for Service of EAN Holdings, LLC, by regular mail and certified return receipt mail. Notice of
17 Filing Service of Process, ECF No. 9, p. 61-91.

18 On January 11, 2013, a Verified Claim and Demand for Return of Property was filed with the
19 Court by Mercedes Agero-Simon. Verified Claim and Demand for Return of Property, ECF No. 14.

20 On January 22, 2013, an Answer to Civil Complaint for Forfeiture In Rem was filed by
21 Mercedes Agero-Simon with the Court. Answer to Civil Complaint for Forfeiture In Rem, ECF No. 15.
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1 On June 19, 2013, a proposed Settlement Agreement, Stipulation for Entry of Judgment of
2 Forfeiture as to Mercedes Agero-Simon and Order was filed with the Court. Settlement Agreement,
3 Stipulation for Entry of Judgment of Forfeiture, ECF No. 20.

4 On June 25, 2013, the Court entered an Order granting the Settlement Agreement, Stipulation for
5 Entry of Judgment of Forfeiture as to Mercedes Agero-Simon. Order, ECF No. 21.

6 No other person or entity has filed a claim, answer, or responsive pleading within the time
7 permitted by 18 U.S.C. § 983(a)(4) and Fed. R. Civ. P. Supp. Rule G(4) and (5).

8 On July 9, 2013, the United States filed an Amended Request for Entry of Default against the
9 defendant property and all persons or entities who claim an interest in the defendant property in the
10 above-entitled action. Amended Request for Entry of Default, ECF No. 24.

11 On July 10, 2013, the Clerk of the Court entered a Default against the defendant property and all
12 persons or entities who claim an interest in the defendant property in the above-entitled action. Default,
13 ECF No. 25.

14 The allegations of the Complaint are sustained by the evidence and should be adopted as findings
15 of fact. The Court should conclude as a matter of law that the United States is entitled to the relief
16 requested in the Complaint.
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18 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that
19 Default Judgment of Forfeiture is entered against EAN Holdings, LLC, and all persons or entities who
20 claim an interest in the defendant property in the above-entitled action.

21 FURTHER ORDERED, ADJUDGED, AND DECREED that Final Judgment of Forfeiture is
22 entered against the \$296,835.00 in United States Currency and Mercedes Agero-Simon.

23 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said property be, and the
24 same is hereby forfeited to the United States of America, and no right, title, or interest in the property
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1 shall exist in any other party, other than Mercedes Agero-Simon, whose rights and liabilities are adjudged
2 below.

3 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, the property having been
4 forfeited, within a practicable time hereafter for the United States, the United States must release to
5 MERCEDES AGERO-SIMON, through David Z. Chesnoff, Esq., one payment of \$103,892.25 in
6 United States Currency, less any debt owed to the United States, any agency of the United States, or any
7 debt in which the United States is authorized to collect.

8 IT IS HEREBY CERTIFIED, pursuant to 28 U.S.C. § 2465(a)(2), that there was reasonable
9 cause for the seizure or arrest of the defendant property.
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12 UNITED STATES DISTRICT JUDGE
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